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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Dale M. Anderson - TDY Actual Subsistence Expenses

File: B-223828

Date: June 15, 1987

## DIGEST

An employee on temporary duty (TDY) in a high rate geographical area in which he was authorized up to \$75 a day for subsistence, for his own convenience, traveled by private automobile instead of commercial airline. He lodged with a family member at no cost and only incurred meal expenses ranging between \$11 and \$33 per day. He claims the maximum actual subsistence reimbursement of \$75 per day authorized for the area. Employees authorized actual subsistence are to be reimbursed only for costs they actually incur and, therefore, this employee may not receive \$75 per day, but is limited to his actual expenses. This amount is then combined with the transportation expense computed on a mileage basis, and is reimbursed to the extent it does not exceed the constructive cost of the travel by commercial airline plus subsistence expenses. In this case the constructive subsistence expenses are the same as the actual subsistence expenses, not the maximum rate of \$75 per day.

## DECISION

The Acting Chief, Finance Division, Mountain Administrative Support Center, U.S. Department of Commerce (Department), Boulder, Colorado, asks us to decide if an employee who traveled to his temporary duty (TDY) site in his privately owned vehicle (POV) and lodged there with relatives has been correctly reimbursed his travel and transportation expenses.

The question involved concerns the employee's contention that the maximum actual subsistence rate should be used in computing the constructive amount to which he is entitled, notwithstanding that he incurred much less in actual expenses. We agree with the agency that the employee is to be limited to reimbursement for actual expenses in this case.

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## BACKGROUND

Mr. Dale M. Anderson, an employee of the Department of Commerce in Denver, Colorado, was scheduled to perform temporary duty in Chicago, Illinois, on March 3, 1986, then travel to Minneapolis, Minnesota, for additional temporary duty, and then to return to Denver on March 14, 1986. For reasons of personal preference he chose to travel in his POV by an indirect route. He left from the Denver area on the morning of March 1, 1986, and traveled by way of Yankton, South Dakota, arriving in Minneapolis, Minnesota, on March 2, 1986. On the morning of March 3, he flew from Minneapolis to Chicago for his TDY there, and he flew back to Minneapolis on the afternoon of March 4. He stayed in Minneapolis until the morning of March 14, 1986, when he commenced his return travel. He arrived in the Denver area on March 16.

During his period of TDY in Minneapolis, he lodged with and apparently ate most of his meals with his relatives. Consequently, the actual subsistence expenses he incurred were much less than the expenses he would have incurred had he stayed in commercial lodging and eaten all his meals in commercial establishments.

Mr. Anderson also rented a car while in Minneapolis, which was approved by the agency as being in the interest of the Government.<sup>1/</sup>

Following the completion of his TDY, Mr. Anderson computed his actual costs as follows:

a. Mileage 1873 miles X 20.5¢	\$ 383.98
b. Subsistence 3/3 - 3/14	388.72
c. Rental	196.41
d. Taxis	47.00
e. Airfare Minneapolis to Chicago and return (paid by Government TR)	196.00

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<sup>1/</sup> It is not clear why Mr. Anderson used a rental car in Minneapolis, but the agency approved it and we are assuming, therefore, that it was used for official business in the Minneapolis area.

f. Per diem for travel time	
2.75 days X \$49	134.75
g. Miscellaneous	<u>14.50</u>
	\$1,361.36

Recognizing that his actual costs would have been different had he not used his POV and not taken an indirect route to his first place of TDY, Chicago, Mr. Anderson computed his constructive costs, that is, the costs he would have incurred had he used commercial transportation to and from his TDY sites. He determined these costs to be:

a. Mileage to and from airport in Denver	
60 X 20.5¢ and parking	\$ 13.30
b. Common carrier airfare	325.00
c. Taxis	33.00
d. Subsistence	832.53
e. Miscellaneous	<u>14.50</u>
	\$1,218.33

He then sought reimbursement of these expenses.

Upon auditing the voucher, the agency made two changes: (1) Mr. Anderson was allowed an additional \$196.41 for the cost of the automobile rental, and (2) Mr. Anderson's subsistence was reduced from \$832.53 to \$336.33. After these two changes were made, the voucher totaled \$918.54. The agency then determined that Mr. Anderson was entitled to \$722.54 since he had used a Government Transportation Request (TR) for the airfare between Minneapolis and Chicago, and the \$196 cost of this TR was deducted from his entitlement to common carrier airfare.

Mr. Anderson, however, argues that he is due additional amounts. His major area of contention concerns the reduction in his subsistence expenses. There is no question that for the period of his TDY, March 3-14, 1986, Mr. Anderson's actual subsistence expenses totaled \$336.33; he does not dispute this and has itemized the lodging and meal expenses that add up to this amount. It is Mr. Anderson's contention that regardless of his actual expenses, he is entitled to \$75 per day for March 3-13, 1986, the maximum rate payable at that time for the areas to which he traveled. He bases this on his assertion that the \$75 rate represents an amount that an average traveler would incur in expenses and,

therefore, he should receive this amount. He seems to be arguing that for a trip such as his the traveler's constructive costs should be based on a fully constructive basis, thus applying the full \$75 rate to each day regardless of other facts which show that the full \$75 reimbursement would be inappropriate. He refers to our decision, B-182500 (55 Comp. Gen. 192 (1975)), as supporting this contention.

#### ANALYSIS AND CONCLUSION

Under the provisions of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), para. 1-2.2d and 1-4.3, incorp. by ref., 41 C.F.R. § 101-7.003 (1986), an employee who uses a POV as a matter of personal preference instead of a common carrier may be reimbursed at the mileage rate plus per diem allowable for the actual travel, but limited to the total constructive cost of common carrier transportation and per diem for travel by common carrier. The comparison is between total actual costs and total constructive costs. 55 Comp. Gen. 192, supra; Rand E. Glass, B-205694, September 27, 1982. In this regard, the constructive cost represents the upper limit of reimbursement and the employee only receives the full constructive cost if the travel cost on a mileage basis is equal to or in excess of the constructive cost. See James C. Myers, B-181573, February 27, 1975.

Under the law and implementing regulations in effect at the time Mr. Anderson traveled, both Minneapolis and Chicago were high rate geographical areas for which he was authorized reimbursement of actual expenses of lodging and subsistence not to exceed \$75 per day. FTR, para. 1-8.1. Rules for computation of mileage and mileage rates were provided in FTR, paras. 1-4.1 and 1-4.2(a).

Applying the constructive computation rule discussed previously to the facts of this case, we find that Mr. Anderson's potential maximum reimbursement for his mileage was limited to the commercial airfare from Denver to Chicago, Chicago to Minneapolis, and Minneapolis to Denver. The agency verified that the commercial flights that would have allowed Mr. Anderson to arrive at the proper time for his TDY assignment would have cost the agency \$325. Using the mileage rate at either Mr. Anderson's claimed actual mileage or at the mileage of a more direct route, the mileage rate computation would exceed the constructive airfare.

As to subsistence expenses, the agency determined that had Mr. Anderson used commercial transportation for his full journey, he would have incurred the same subsistence expenses he listed as subsistence actually incurred since he did not include subsistence expenses for the excess travel

time due to his using a POV. He first claimed subsistence on March 3 when he flew from Minneapolis to Chicago and incurred actual expenses of over \$75 for his stay in Chicago. Had he flown directly to Chicago from Denver on March 3, he would have incurred the same expenses. On March 14 when he left Minneapolis in his POV he only claimed breakfast, the same expense he would have claimed had he flown back to Denver.<sup>2/</sup>

Thus, in computing Mr. Anderson's reimbursement, the agency limited it to the constructive airfare plus actual subsistence expenses incurred.

Mr. Anderson argues, however, that notwithstanding his actual subsistence expenses, he should receive reimbursement at the maximum rate of \$75 per day. In so arguing, he misconstrues the nature of this entitlement which is to reimburse an employee for additional expenses he incurs due to official travel. See Jack C. Smith, 63 Comp. Gen. 594, 597-598 (1984). Moreover, a maximum rate is merely the potential amount that an employee may receive if he incurs necessary and reasonable expenses up to or in excess of that amount. See Harry G. Bayne, 61 Comp. Gen. 13 (1981). Therefore, in computing the constructive subsistence expenses, the agency properly limited them in this case to those actually incurred.

Finally, as to 55 Comp. Gen. 192, to which Mr. Anderson referred, that decision holds, in accordance with FTR, para. 1-4.3, that in cases where the employee elects to travel by POV for his personal convenience, the actual total travel costs of transportation and per diem may be paid in an amount not to exceed the constructive total costs of transportation and per diem. That decision, however, does not hold that in computing the constructive travel costs to an area where reimbursement of actual subsistence expenses is authorized, the maximum daily amount (\$75 in this case) must be used where other factors show that if the travel had been performed on the constructive basis a lesser amount would have been paid. See also, Kelly G. Nobles, B-219121, supra.

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<sup>2/</sup> Apparently both Mr. Anderson and the agency realized that a traveler who uses a POV for personal reasons should be placed in annual leave for the excess travel time and subsistence is not payable to an employee on leave. See Kelly G. Nobles, B-219121, 65 Comp. Gen. \_\_\_\_\_ (1986), and cases cited therein.

In Mr. Anderson's case since the mileage and subsistence expenses incurred exceeded the total constructive airfare and constructive subsistence (which was determined to be the same as the actual subsistence), the agency properly limited his reimbursement to that constructive amount.

*for* *Harvey R. Van Cleave*  
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